

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SSOV '81 LTD.	:	
D/B/A PEOPLE RESOURCES	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1984	:	
through March 31, 1992.	:	DETERMINATION
	:	DTA NOS. 810966
	:	AND 810967
In the Matter of the Petition	:	
of	:	
SUSAN WALLACE	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1984	:	
through March 31, 1992.	:	

Petitioner SSOV '81 Ltd. d/b/a People Resources, 847A 2nd Avenue #228, New York, New York 10017-2945, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1984 through March 31, 1992.¹

Petitioner Susan Wallace, 2 Tudor City Plaza, Apt. 10DN, New York, New York 10017, filed a petition for revision of a determination or for refund

¹On September 14, 1992, petitioner filed a claim for refund of sales and use taxes of \$142,796.50 paid for the period September 1990 through March 1992. The Division of Taxation did not respond to the refund claim and, on June 21, 1993, petitioner and the Division of Taxation stipulated that the petition was amended to include an appeal of the denial of the claimed refund.

of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1984 through March 31, 1992.²

On June 21, 1993 and June 24, 1993, respectively, both petitioners by their duly authorized representative, Bragar & Wexler, P.C. (Raymond A. Bragar, Esq., of counsel), and the Division of Taxation by William F. Collins, Esq. (Carroll R. Jenkins, Esq., of counsel) consented to have the controversy determined on submission without hearing. All documentary evidence and briefs were due by October 18, 1993. On June 26, 1993, the Division of Taxation submitted documentary evidence. Petitioners submitted a brief on August 19, 1993. The Division of Taxation submitted a responding brief on September 23, 1993. Petitioners submitted a reply brief on October 15, 1993. After due consideration of the record, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether People Resources provided taxable information services to its members.

FINDINGS OF FACT

The Division of Taxation ("Division") and petitioners agreed to a Stipulation of Facts which has been incorporated into the following Findings of Fact.

During the period at issue, petitioner SSOV '81 Ltd. was a corporation doing business in the State of New York under the name of People

Resources. People Resources was located at 119 West 57th Street, New York, New York. The company ceased doing business in March 1992.

Susan A. Wallace was sole owner and president of People Resources through the period at issue.

People Resources was variously described in its Federal and State tax returns as a

²It was agreed by the parties that both petitions would be amended to include the denial of the refund claim filed by SSOV '81 Ltd. d/b/a People Resources for the period September 1990 through March 1992.

"social club" or "private club for singles". People Resources was described in its advertising as "the private club for remarkable single people." It had a membership in excess of 2,300 single adults.

The company's purpose was to enable its members to meet with other members of their own choosing. Members submitted a written resumé. Review of a sample resumé reveals the following:

- (a) Only the member's first name was listed, as well as the member number and cassette number;
- (b) The form requested the following background information: height; weight; date of birth; color of eyes; color of hair; current occupation; previous occupation, if any; schools attended and area of concentration or specialty; childhood place of residence and length of time in which the member had lived in his or her present area; the town/city of employment; town/city of residence; marital status; number of children, if any, and the number living at home;
- (c) The member was requested to express his or her feelings about himself or herself and/or other people he or she might meet regarding: smoking; drinking; drugs; religion;
- (d) The member was asked to describe his or her greatest assets;
- (e) The member was asked to give a verbal photograph of how he or she saw himself or herself (i.e., personality, beliefs, values, etc.);
- (f) The member was asked to describe the person he or she would like to meet;
- (g) The member was asked to name two or three people whom he or she admired;
- (h) The member was asked to state what three wishes he or she would like granted;
- and
- (i) The member could add anything else he or she wished.

Members were also photographed, and participated in a two- or three-minute interview conducted and taped by the company. In this process some members were counseled as to how to maximize their presentation of themselves. The member's picture was attached to his or her

resumé, which became the member's biography. The member's biography and videotaped interview constituted the "member's profile". The members' profiles were placed in the member profile library for other members to view. The member profile library was utilized by People Resources' members to meet each other.

Each member had the opportunity to review the other members' profiles and issue invitations to meet such other members as they selected. When members received an invitation, they reviewed the profile of the invitor and decided whether to accept or decline. When an invitation was accepted, the accepting member completed the invitation by setting forth his or her full name and telephone number. People Resources notified the accepting member orally of the inviting member's full name and telephone number. Members could telephone the office of People Resources to be advised if invitations had been received or completed (accepted). Members could also telephone and obtain the full names and telephone numbers of other members who had accepted their invitations.

Individuals, when they executed the membership agreement, could give People Resources permission to show their profile and/or videotape for in-house training and selling, publicity purposes and to prospective members.

On May 29, 1990, petitioners' former counsel received a letter from Arthur Proper, of the Department of Taxation and Finance, Technical Services Bureau, Sales Tax Instructions and Interpretations Unit. Mr. Proper's letter was in response to counsel's inquiry as to whether or not People Resources was required to collect sales tax on the service of providing a forum within which people may choose each other based on the information provided by the individuals themselves. Although it was determined that People Resources was in the business of collecting, compiling or analyzing information which constituted an information service within the meaning of 20 NYCRR 527.3, because the information offered by it was limited to oral responses, the service was considered exempt from sales or use tax. Since oral reports were exempt from sales tax, the issue of whether the information provided was personal and individual in nature was not addressed.

On January 11, 1990, the Division initiated an audit of People Resources by sending an appointment letter and request for records to the taxpayer for the period June 1, 1986 to November 30, 1989. Subsequently, the audit period was extended, and a second request for records was sent to People Resources for the period March 1, 1984 through February 28, 1991.

People Resources had no sales invoices, sales day books or register tapes. All receipts from sales were entered in the cash receipts journal. Petitioner's accountant prepared Federal income tax returns from the cash receipts journal. All of petitioner's sales for the audit period were made in New York City. A detailed analysis of the cash receipts journal for the audit period March 1, 1984 to February 28, 1991 resulted in additional taxable sales of \$7,363,490.30 and additional tax due of \$607,487.95. Invoices for the purchases of fixed assets were examined in detail and it was determined that additional use tax of \$3,558.47 was due on purchases of \$43,132.97.

The auditor determined that People Resources was in the business of providing dating referral services to its members for fees. People Resources disagreed and filed for an Advisory Opinion (Petition No. S910103A).

On March 18, 1991, the Division issued an Advisory Opinion (TSB-A-91[28]S) to People Resources which concluded that it was providing an information service subject to sales tax.

Prior to September 1990, People Resources did not pay sales taxes on its sales receipts. People Resources began reporting and paying sales tax on its sales receipts for the tax quarter beginning September 1, 1990. For the period September 1990 through March 1992, People Resources paid sales taxes of \$142,796.50 on its receipts and was given credit for such payments.

On April 10, 1992, the Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (L-005468251-1) to SSOV '81 Ltd. d/b/a People Resources assessing sales and use taxes in the amount of \$611,046.42, plus minimum interest, for the period March 1, 1984 through February 28, 1991. On April 10, 1992, the Division

issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Susan Wallace, as officer, assessing sales and use taxes in the amount of \$611,046.92, plus interest, for the same period.³

On July 1, 1992, People Resources and Susan Wallace filed petitions for redetermination of both notices of determination.

On August 31, 1992, the Division answered both petitions.

On September 14, 1992, People Resources applied for a refund of sales and use taxes of \$142,796.50 paid for the period September 1990 through February 1992.

The Division did not respond to the refund claim and, on June 21, 1993, petitioners and the Division stipulated that both petitions were amended to include an appeal of the denial of the claimed refund. The parties agreed that the refund claim and the original petitions contain the identical issues and should be consolidated.

On August 19, 1993, the parties entered into an amended Stipulation of Facts wherein the period of the refund claim was stipulated to be September 1990 through March 1992, and the period in issue is March 1, 1984 through March 31, 1992.

The Division's answer, dated August 31, 1992, is deemed the answer to the two petitions, as amended.

SUMMARY OF THE PARTIES' POSITIONS

Petitioners assert that the charging of membership fees by People Resources did not constitute the sale of information within the meaning of

Tax Law § 1105(c)(1) because it did not analyze, screen or select the member profiles. Only the members determined the selections of potential dates.

Petitioners assert that People Resources in no way functioned to "collect and disseminate information." It provided an environment for people to meet other people. Petitioners argue

³The parties stipulated that the notice of determination to Susan Wallace was issued April 10, 1992, although the actual date on the notice is May 26, 1992.

that "[i]n no reasonable sense of the word is 'information' being sold." They further argue that:

"the membership fee that was paid to People Resources is not to obtain information relating to certain people, but the membership fee is for the purpose of members promoting themselves and potentially meeting other individual members and, thus, not subject to the sales tax as an information service."

Petitioners contend that even if People Resources is deemed to have sold information, it would not be subject to sales tax because it did not compile or analyze any data. They cite to Advisory Opinion TSB-A-85(61)S (December 4, 1985) which stated that "[t]he mere writing down of information supplied by clients without collecting, compiling or analyzing the data is not an information service." Petitioners argue that the facts in the instant case are strikingly similar to those in TSB-A-85(61)S in that "People Resources merely collected written information and video information supplied by its members" (emphasis in original). They state that the member profile information was not even written down by People Resources' employees.

Petitioners assert that the conclusion of their Advisory Opinion TSB-A-91(28)S (March 18, 1991) "apparently" attempts to avoid the holding reached in TSB-A-85(61)S (December 4, 1985) by stating that People Resources' data is analyzed so as "to separate it as to men, women and sexual preference" Petitioners contend that merely categorizing the members as male or female does not rise to the level of an "analysis" within the meaning of the sales tax statute and "there is no authority to support this position set forth in the Advisory Opinion." Petitioners further state that People Resources did not categorize its members with respect to sexual preference.

Petitioners maintain that in the event that the sale of memberships is deemed to be a sale of information, it is exempt from sales tax pursuant to Tax Law § 1105(c)(1). Petitioners contend that the alleged "information" elicited from each member in the resumé or autobiography was that individual's "most intimate thoughts about religion, sex and other activities." They further contend that each question "is excruciatingly personal" because "[i]ts purpose is to facilitate meeting other people for the most personal, social reasons."

Petitioners argue that their Advisory Opinion TSB-A-91(28)S (March 18, 1991) did not

analyze the personal information exclusion. Petitioners assert that the "information" was not "substantially incorporated in reports furnished to other persons." Furthermore, petitioners maintain that People Resources made no report at all; rather, members filled out the questionnaire which was put in People Resources' library. No report was "furnished" to anyone; members looked at each other's profiles only in the library and did not copy any portion of the profile. Petitioners also argue that notice was given to the members orally that invitations had been extended to them, and that, since there was no "written report", the statute would not apply.

The Division contends that People Resources furnished information to others in a manner which constituted an information service. The Division asserts that the customers of People Resources were the 2,300 plus members who paid a fee for the privilege of viewing profiles in the company's library and having their invitations processed. It contends that "these profiles, especially the written part referred to as either the resumé or autobiography, qualify as reports within the meaning of Tax Law § 1105(c)(1)." Furthermore, it contends that these reports contained information not previously possessed by the viewing members; "if they had possessed the information, they would not need the services of People Resources."

The Division maintains that the reports were collected by People Resources and placed in the company's library for viewing by the members, and that they were also compiled by People Resources "in that information concerning a large number of potential dates is organized in a single format for easy viewing, analysis and comparison." It also argues that petitioners furnished "a report thereof to other persons" each and every time a particular profile was viewed by a member in the People Resources library. The Division asserts that the membership agreement, signed by each member, repeatedly makes reference to "information".

The Division, citing Murphy Heating Service v. Chu (124 AD2d 907, 508 NYS2d 323 [3d Dept 1986]), asserts that even though the viewing members did not receive their own "actual, physical written" copy of the resumé's they viewed, People Resources would fall within the scope of Tax Law § 1105(c)(1). The Division contends as well that the viewing of the

videotaped interviews would also arguably be within the scope of the statute as interpreted by the Murphy court, since the information conveyed by the videotapes is similar in kind to that related in the written resumés.

The Division asserts that the information service operated by People Resources fails to qualify for the Tax Law § 1105(c)(1) exclusion because it fails both parts of that exclusion's test.

The Division contends that petitioners are misinterpreting the term "personal or individual". Citing relevant case law, the Division argues that the private nature of a report's subject matter is not pertinent to the question of whether the report is "personal or individual". Rather, review of the case law reveals "that the term 'personal or individual' is used with respect to the service provided to the customer, and refers to a report that is customized for and thus unique to that customer."

The Division argues that information was provided to People Resources' customers, its members, each time one member viewed the profile of another and, as such, the information provided to the viewing member was not personal or individual with respect to that member. The Division contends that the profiles or reports viewed by a member were not customized for that member because that member did not provide any information. The Division argues that no effort was made by People Resources to "tailor" the reports to match the specifications of any particular viewing member, since the profile was generated merely by having each applicant fill out the same form. In addition, the Division maintains that the profiles housed in the People Resources' library, the "data repository", were both non-confidential and widely accessible as each was open to review by all 2,300 members. Furthermore, the Division contends that any outside person could gain access to the library by becoming a member, and that membership was easily obtained by any single adult who was not employed by a competing dating service.

The Division argues that the information provided to each People Resources' member was substantially incorporated in reports to others and that each profile reviewed by one member was available for viewing by all the other 2,300 plus members. The Division further argues that

a report was "furnished to other persons" each and every time a particular profile was viewed by more than one member. In addition, the Division contends that "a particular profile viewed by one member is unchanged when viewed by a second member" and, therefore, the "information furnished to one customer is always and completely incorporated in reports to others" (emphasis in original).

The Division asserts that People Resources should be deemed a taxable information service, that the petitions should be dismissed, the denial of the refund application affirmed and the assessments sustained in their entirety.

In petitioners' reply brief, they assert that the purpose of People Resources was to permit people to meet and date others, and that the membership fee was paid for the continuing opportunity of promoting oneself and meeting other people. They contend that "[j]ust because one method for meeting people is a review of profiles does not turn People Resources into a profile service, as opposed to a dating service."

Petitioners further assert that the Division is incorrect. People Resources did not "collect, compile or analyze" any of the information provided by its members. It did not reformat data; "[i]t used the profiles in their raw form just as they were filled out by its members." Petitioners maintain that People Resources relied upon TSB-A-85(61)S (December 4, 1985) that "the mere writing down of information supplied by clients without collecting, compiling or analyzing the data is not an information service."

Petitioners contend that the Division has misinterpreted Tax Law § 1105(c)(1) and the cases to which it has cited. They argue that "the statute permits alternative bases for the exclusion -- personal information or individual, i.e., customized or tailored information." They further argue that "the statute applies to situations such as People Resources, where the information is highly confidential, contained only in People Resources' library and open only to its members." Petitioners contend that the purpose of the statute is to limit the personal exemption where the information disclosed is itself incorporated into another report which is made available to others and that the use of the personal information in subsequent reports

deprives it of the immunity from taxation. Furthermore, they contend that the statute is intended to exempt personal or individualized information in a report, so long as it is not incorporated into another report furnished to other persons. Petitioners argue that since there is no second report of any kind, there is nothing for the information to be incorporated into and no reason to deprive People Resources of the personal information exemption.

Petitioners assert that they are not subject to sales tax and that the notices of determination issued to SSOV '81 Ltd. d/b/a People Resources and Susan Wallace should be vacated and People Resources' refund claim should be granted in full with interest.

CONCLUSIONS OF LAW

A. Tax Law § 1105(c)(1) provides that the receipts from every sale, except for resale, of the following services are subject to sales tax:

"[T]he furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons"

B. 20 NYCRR 527.3 provides, in pertinent part, as follows:

"(a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

"(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

"(3) Among the services which are information services are credit reports, tax or stock market advisory and analysis reports and product and marketing surveys.

* * *

"(b) Exclusions. (1) Sales tax does not apply to receipts from sales of information services which are for resale as such.

"(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

* * *

"(3) Sales tax does not apply to receipts from sales of information services which are only furnished orally"

C. Petitioners claim that the service provided by People Resources is not subject to sales tax pursuant to Tax Law § 1105(c)(1) for two reasons. First, petitioners claim that People Resources was not an information service because it did not compile, analyze or sell any data or information. Second, they contend that even if it were deemed an information service, it would be excluded from taxation because any information provided to its members was personal and was not substantially incorporated in reports furnished to others. I will first address the question of whether People Resources was an information service as defined by Tax Law § 1105(c)(1).

Petitioners argue that People Resources was neither a profile service nor an information service. Rather, they argue, it was a dating service whose main purpose was to permit people to meet other people. Petitioners describe People Resources as a tool -- a resource to meet other people. They contend that the membership fees purchased the opportunity to promote oneself and meet other members. In addition, they contend that People Resources did not "collect, compile or analyze" any of the information provided by its members, and that it used the profiles in their raw form just as they were filled out by the members. Petitioners rely on Advisory Opinion TSB-A-85(61)S (December 4, 1985) to support their position. Pursuant to 20 NYCRR 2376.4, an Advisory Opinion is binding upon the Commissioner only with respect to the person to whom the Advisory Opinion is rendered. This Advisory Opinion was not issued to petitioners.

However, Advisory Opinion TSB-A-91(28)S (March 18, 1991) was in fact issued to People Resources. This Advisory Opinion determined that People Resources provided an information service subject to sales tax pursuant to Tax Law § 1105(c)(1) and 20 NYCRR 527.3(a). Petitioners argue that the Division made that determination based on the erroneous belief that People Resources separated the profiles according to sexual preference. Petitioners contend that People Resources did not "separate the biographies according to sexual preference."

Tax Law § 1105(c)(1) makes taxable the service of "furnishing information by printed, mimeographed or multigraphed matter . . . including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons." The scope of the term "furnishing information" was addressed in Finserv Computer Corp. v. Tully (94 AD2d 197, 463 NYS2d 923, affd 61 NY2d 947, 475 NYS2d 279). That court stated:

"[o]ne cannot collect, compile or analyze the data of a customer without in some way significantly adding to the sum of knowledge of the customer with respect to that data" (Finserv Computer Corp. v. Tully, supra, 463 NYS2d at 924).

Likewise, in ADP Automotive Claims Services v. Tax Appeals Tribunal (188 AD2d 245, 594 NYS2d 96, lv denied 82 NY2d 655, 602 NYS2d 804), the court held that the business at issue was an information service because the reports generated "contain[ed] intelligence that the customer did not have originally" (ADP Automotive Claims Services v. Tax Appeals Tribunal, supra, 594 NYS2d at 98).

Petitioners' activities constitute an information service. Prospective members were asked to complete a resumé or autobiography, their picture was taken and a short interview was videotaped by People Resources' employees. People Resources then compiled this resumé, photograph and videotape creating the member's profile. This profile constituted a report within the meaning of Tax Law § 1105(c)(1). Each member's profile was collected in the members' profile library. The fee paid by each member permitted him or her to have his or her profile in the library and to have unlimited access to the profiles of the other 2,300 plus members. Each member received new information every time another member's profile was reviewed, especially the written part, referred to as the resumé or autobiography, and also the videotape. The member received a report every time another member's profile was reviewed.

Petitioners have argued that since the members did not receive copies of the other members' profiles, no report was furnished to another person and therefore their business was not a taxable information service. The issue of whether a written report must be supplied was addressed in Murphy Heating Service v. Chu (124 AD2d 907, 508 NYS2d 323 [3d Dept 1986]). In Murphy Heating, the information was conveyed by displaying it upon a computer terminal.

The court stated:

"[w]e are similarly unpersuaded by petitioners' contention that Tax Law § 1105(c)(1) does not encompass the instant sale since General was never given an actual, physical written or printed customer list Tax Law § 1105(c)(1) imposes a sales tax upon '[t]he furnishing of information by printed, mimeographed, or multigraphed matter or by duplicating written or printed matter in any other manner', . . . including by means of an electronic readout or display Petitioners' attempt to compare their accessing of computer memory with the nontaxable oral transmission of information (see, 20 NYCRR 527.3[b][3]) is not convincing" (Murphy Heating Service v. Chu, supra, 508 NYS2d at 324).

Although the People Resources' members did not receive their own "actual, physical written" copy of the profiles they viewed, the information conveyed by People Resources does fall within the scope of Tax Law § 1105(c)(1). Both the reading of the resumés or autobiographies and the viewing of the videotapes constitute a taxable transfer of information.

Thus, People Resources was an information service as defined by Tax Law § 1105(c)(1).

D. Petitioners contend that even if People Resources is deemed an information service, the information provided to its members was personal and was not substantially incorporated in reports furnished to others. Petitioners argue that the exclusion provision of Tax Law § 1105(c)(1) applies to situations such as People Resources, "where the information is highly confidential, contained only in People Resources' library and open only to its members." They contend that the alleged "information" elicited from each member in the resumé or autobiography was that individual's "most intimate thoughts about religion, sex and other activities." They further contend that each question "is excruciatingly personal" because "[i]ts purpose is to facilitate meeting other people for the most personal, social reasons." Petitioners also assert that they did not incorporate the personal information into a second report and, therefore, since there was no second report of any kind, there was nothing in which the information might be incorporated and no reason to deprive People Resources of the personal information exclusion.

Although the information contained in the resumé or autobiography was of a private nature, it does not qualify as "personal or individual information" within the meaning of Tax Law § 1105(c)(1). The term "personal or individual information" was interpreted by the Third

Department in New York Life Ins. Co. v. State Tax Commn. (80 AD2d 675, 436 NYS2d 380, affd on opinion below 55 NY2d 758, 447 NYS2d 245 [1981]). The New York Life court focused upon the manner in which the report was "tailored" to the needs of the customer, an insurance company, stating:

"[t]he interview phase of these investigations, the primary basis of the report, is tailored in each instance to the particular specifications as promulgated by the petitioner company in its request. It is somewhat difficult to imagine how any information could be more personal or individual" (New York Life Ins. Co. v. State Tax Commn., supra, 436 NYS2d at 382).

In that case, because of the customized or tailored aspect of the reports, the court held that the reports were "personal or individual" to the insurance companies. It is the uniqueness of the service provided to the customer, not the "private" nature of the underlying subject matter, which determines whether information is "personal or individual" (see, Twin Coast Newspapers v. State Tax Commn. (101 AD2d 977, 477 NYS2d 718, appeal dismissed 64 NY2d 874, 487 NYS2d 553; Towne-Oller & Assocs. v. State Tax Commn., 120 AD2d 873, 502 NYS2d 544 [3d Dept 1986]; Allstate Ins. Co. v. Tax Commn., 115 AD2d 831, 495 NYS2d 789, affd 67 NY2d 999, 502 NYS2d 1004; Westwood Pharmaceuticals v. State Tax Commn., 164 AD2d 462, 564 NYS2d 1020, lv denied 77 NY2d 807, 569 NYS2d 610).

Customizing alone is not sufficient to establish that reports are "personal or individual".

The court in ADP Automotive Claims Services v. Tax Appeals Tribunal (supra) stated that:

"[w]hile, admittedly, the cost estimates are customized to each particular situation, it is now clear that this is not the sole determinative factor by which the status of a service as personal or individual in nature is measured (see, Matter of Rich Prods Corp. v. Chu, 132 AD2d 175, 521 NYS2d 865, lv denied, 72 NY2d 802, 530 NYS2d 554, 526 NE2d 45). Rather, in situations where, as here, the provided service comes from a common source or a data repository that is not confidential and is widely accessible, we have consistently held it not to be personal or individual in nature (see, id.; Matter of Towne-Oller & Assocs. v. State Tax Commission, 120 AD2d 873, 502 NYS2d 544)" (ADP Automotive Claims Service v. Tax Appeals Tribunal, supra, 594 NYS2d at 98).

Thus, regardless of whether information is customized to the customer's specifications or needs, if the information service comes from a common source or data repository that is not confidential and is widely accessible, it is not "personal" or "individual" for purposes of Tax Law § 1105(c)(1).

In the instant case, information was provided to People Resources' members each time one member viewed the profile of another. Each member filled out the same resumé or autobiography form. The information in the resumé portion was private with respect to the preparer. However, the information provided to the viewing member was not personal or individual with respect to that member. People Resources did not "tailor" the profiles to match the specifications of any particular viewing member. Since all 2,300 members had unlimited access to the members' profile library, the "data repository", the information was non-confidential and widely accessible. Any outside individual might access the profiles by simply becoming a member. Membership was easily obtained by any single adult who was not employed by a rival dating service. In addition, under the terms of the membership agreement, a member might permit People Resources to use his or her profile for in-house sales training, for viewing by prospective members or in external publicity. Thus, the information supplied by People Resources was not "personal" or individual" within the meaning of Tax Law § 1105(c)(1).

Petitioners have argued that since no second report was prepared, there was nothing in which the information might be incorporated and, therefore, People Resources qualified for the exclusion. This argument is without merit. The exclusion is unavailable if the information is substantially incorporated into a report furnished to others. It does not matter that a new report was not generated each time a report was furnished to another person. Each time a member viewed another member's profile, the information was incorporated into a report furnished to the viewing member. The viewing member received new information about a prospective date each time another member's profile was reviewed.

Petitioners have not proven that the profiles were viewed only once. As long as the profiles were housed in the library, there was the potential that they might be viewed a number of times. Each member hoped his or her profile would be reviewed by a number of potential dates and that invitations would be issued. Since the profiles remained unchanged in the members' profile library, information furnished to one viewing member was always and

completely incorporated in reports to others.

Thus, petitioners fail to qualify for the Tax Law § 1105(c)(1) exclusion since People Resources did not supply information that was personal or individual in nature and the information incorporated in one report was incorporated in reports furnished to others.

E. The Division contends that petitioners' dating referral service is analogous to multiple listing services which have been held to be taxable information services by the former State Tax Commission (see, Matter of Putnam County Multiple Listing Corp., State Tax Commn., July 15, 1983; Matter of Central Listing Service, State Tax Commn., April 24, 1978). State Tax Commission decisions are not binding precedent, but are entitled to respectful consideration (see, Matter of The Racal Corporation and Decca Electronics, Tax Appeals Tribunal, May 13, 1993, citing Matter of Cruickshank's Estate, 169 Misc 514, 8 NYS2d 279). The Division is correct; petitioners' dating service is analogous to multiple listing services.

Petitioners provided a taxable information service.

F. The petitions of SSOV '81 Ltd. d/b/a People Resources and Susan Wallace are denied, the denial of SSOV '81 Ltd. d/b/a People Resources' claim for refund is affirmed and the two notices of determination (Notice Nos. L-005468251-1 and L-005694346-6) are sustained.

DATED: Troy, New York
March 31, 1994

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE